



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 23, 2019

Mr. David V. Overcash
Counsel for City of Anna
Wolfe, Tidwell & McCoy, LLP
2591 Dallas Parkway, Suite 300
Frisco, Texas 75034

OR2019-20054

Dear Mr. Overcash:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 776472 (File# W001847-042919).

The City of Anna (the "city"), which you represent, received a request for information pertaining to a specified police report. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the city must withhold the public citizens' dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The city states the information you marked relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information you marked. Thus, the city may withhold the information you marked under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, the city must withhold the public citizens' dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information you marked under section 552.108(a)(2) of the Government Code. The city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The city must release the remaining information.¹

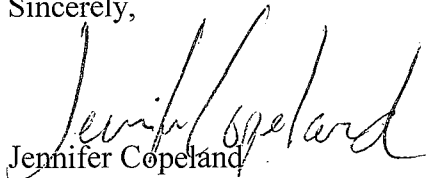
Finally, although you ask this office to issue a previous determination permitting the city to withhold public citizens' dates of birth, we note that in Open Records Letter No. 2019-14751 (2019) this office already issued a previous determination authorizing the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code).

¹We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JLU/mo

Ref: ID# 776472

Enc. Submitted documents

c: Requestor
(w/o enclosures)